

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

State Senator Scott Newman and State
Senator Mike Parry,
Complainants,

vs.

ORDER OF DISMISSAL

Mark Ritchie, Minnesota State Secretary
of State,
Respondent.

This matter came on for a probable cause hearing under Minnesota Statutes § 211B.34, before Administrative Law Judge Bruce H. Johnson on October 12, 2012, to consider a complaint filed by State Senators Scott Newman and Mike Parry on October 1, 2012. The probable cause hearing was conducted by telephone conference call. The record closed on October 31, 2012.

Frederick W. Knaack, Attorney at Law, appeared on behalf of State Senators Scott Newman and Mike Parry ("Complainants"). Kristyn Anderson and Jacob Campion, Assistant Attorneys General, appeared on behalf of Secretary of State Mark Ritchie ("Respondent").

Based on the record and all of the proceedings in this matter, including the Memorandum incorporated herein, the Administrative Law Judge finds that there is not probable cause to believe that the Respondents violated Minn. Stat. §§ 211B.04, 211B.06, or 211B.09.

ORDER

IT IS ORDERED: That there is not probable cause to believe that Respondent violated Minnesota Statutes §§ 211B.04, 211B.06, or 211B.09 as alleged in the Complaint, and this matter is accordingly DISMISSED.

Dated: November 1, 2012

s/Bruce H. Johnson
BRUCE H. JOHNSON
Administrative Law Judge

Digitally recorded; no transcript prepared

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minnesota Statutes § 211B.34, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minn. Stat. § 211B.35 within five business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5, and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

This case involves several communications made by the Respondent in his official capacity as Minnesota's Secretary of State, all pertaining to a question on the ballot for the upcoming general election. The ballot question proposes a constitutional amendment on elections. The communications at issue include material disseminated on the Respondent's official website; a letter to a not-for-profit organization written on the Respondent's official stationery; statements the Respondent made at several public meetings; a newspaper article; and a written editorial opinion that the Respondent submitted to a newspaper. The Complainants allege that all of those communications are "campaign material" within the meaning of Minn. Stat. § 211B.01, subd. 2, and are therefore subject to the requirements and prohibitions in other provisions of Minn. Stat. Ch. 211B. Specifically, they allege that that the Respondent used his authority or influence to compel members of his staff to assist him in making the communications in violation of Minn. Stat. § 211B.09; that the communications contain several false statements with respect to the effect of that ballot question in violation of Minn. Stat. § 211B.06; and that the communications do not contain a disclaimer prescribed by Minn. Stat. § 211B.04.

I. STANDARD OF REVIEW

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that violations of law have occurred as alleged in the complaint.¹ The Office of Administrative Hearings looks to the standards governing probable cause determinations under Minn. R. Crim. P. 11.03 and by the Minnesota

¹ Minn. Stat. § 211B.34, subd. 2; *Posuta v. Wojchowski*, OAH 3-6385-17601-CV (Nov. 6, 2006).

Supreme Court in *State v. Florence*.² One must determine whether, given the facts disclosed in the record, it is fair and reasonable to require the respondent to go to hearing on the merits.³ A statement of fact must be “capable of being proved true or false.”⁴ “[T]he test of probable cause is whether the evidence worthy of consideration ... brings the charge against the [defendant] within reasonable probability.” In other words, a finding of probable cause must be supported by evidence with probative value.

II. Minn. Stat. § 211B.09

Minn. Stat. § 211B.09 provides, in part:

An employee or official of the state or of a political subdivision may not use official authority or influence to compel a person to ... take part in political activity.

In order to allege a *prima facie* violation of Minn. Stat. § 211B.09, the Complainants must put forward facts that would support finding the Respondent used his authority or influence to “compel” members of his staff to take part in a political activity. The Merriam Webster Dictionary defines “compel” to mean “to drive or urge forcefully or irresistibly,” or “to cause to do or occur by overwhelming pressure.”⁵ Here, the Complainants allege that that Respondent’s employees felt pressured to assist in disseminating the communications at issue. They offered no direct evidence of that claim. Rather, they assert that compulsion can necessarily be inferred from the fact that Secretary Ritchie was their supervisor—a bald inference unaccompanied by any supporting evidence. That bare inference is insufficient to raise a fact question or to require the Respondent to meet this claim at a hearing. Even if it were sufficient, the Respondent presented sworn affidavit testimony that his office staff were not forced to participate in or disseminate the communications at issue. The ALJ therefore concludes that the Complainants have failed to meet their burden of establishing probable cause that a violation of Minn. Stat. § 211B.09.⁶

III. Minn. Stat. § 211B.06

Minn. Stat. § 211B.06 prohibits intentional participation

in the preparation, dissemination, or broadcast of ... campaign material with respect to ... the effect of a ballot question, that is designed or tends to ... promote or defeat a ballot question, that is false, and that the person

² *State v. Florence*, 239 N.W.2d 892 (Minn. 1976); see also Black’s Law Dictionary 1219 (7th ed. 1999) (defining “probable cause” as “[a] reasonable ground to suspect that a person has committed or is committing a crime.”).

³ *State v. Florence*, 239 N.W.2d at 902.

⁴ *Id.* at 896.

⁵ Merriam Webster Online Dictionary (2012).

⁶ See *Anderson v. Otto, et al.*, OAH 15-0320-21579-CV (Oct. 1, 2010).

knows is false or communicates to others with reckless disregard of whether it is false.⁷

The Complainants allege that some statements on the Respondent's website about the voter identification amendment are explicitly false. They also allege that statements are "misleading and misinforming the public."⁸ With respect to allegedly false statements, the Complainants have the burden at this probable cause stage of the proceeding, of presenting evidence, sufficient to withstand a motion to dismiss in a civil case, establishing that the statements were false, and that the Respondent either published the statements knowing the statements were false, or that he "in fact entertained serious doubts" as to the truth of the publication or acted "with a high degree of awareness" of its probable falsity.⁹ On the other hand, any statements that are only misleading are not simply actionable under Minn. Stat. § 211B.06.¹⁰ Minn. Stat. § 211B.06 is not broad enough to prohibit incomplete and unfair campaign statements, even those that are clearly misleading.

A. Statements on Respondent's Website

The Complainants assert that certain statements on the Respondent's official website that pertain to the voter identification ballot question are false in several respects:

The Respondent's official website states:

Since Minnesota does not currently have provisional balloting, there would be startup costs to local and state agencies of \$50 million and on-going costs for local governments of over \$10 million that would need to be paid through local taxes.

The Complainants' claim is that those cost figures "grossly exaggerated the potential fiscal impact" of the proposed amendment. They attempt to establish this by presenting what they consider to be inconsistent information in the fiscal note prepared for the legislature by the Department of Management and Budget ("MMB"). First of all, fiscal notes are *estimates* of future costs of specific legislation being considered by the Legislature. Affected state agencies prepare estimates of their future costs; they then forward them to MMB, which consolidates them for the legislature. The contents of agency fiscal notes are therefore statements of opinion and not of fact. Thus, they are

⁷ The term "reckless disregard" was added to the statute in 1998 to expressly incorporate the "actual malice" standard applicable to defamation cases involving public officials from *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); see also *State v. Jude*, 554 N.W.2d 750, 754 (Minn. App. 1996).

⁸ Complainants' Written Argument Supporting a Determination of Probable Cause ("Complainant's Post-Hearing Brief") at p. 8.

⁹ See *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); see also *Riley v. Jankowski*, 713 N.W.2d 379, 401 (Minn. App. 2006), *rev. denied* (Minn. July 20, 2006).

¹⁰ *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (statements which "told only one side of the story," or were merely "unfair" or "unjust," without being demonstrably false, are not prohibited by the Fair Campaign Practices Act.); see also, *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981).

by their very nature speculative. Second, the fiscal notes cited by the Complainants were prepared by the Respondent and other state agencies and only estimated the cost of placing the question on the ballot. They did not attempt to estimate the potential cost to the state of future legislation to implement new voter identification requirements. However, MMB also estimated the future financial impact of the proposed legislation on local governments. Those estimates do appear to include future implementation costs. However, because the actual details of future implementation will have to be determined by a future legislature, those future costs might vary considerably from the initial local impact estimates. Thus, current estimates of local government cost are also very speculative.

MMB currently estimates the cost of putting the question on the ballot at \$200,000 and the local impact to be about \$33.3 million. On the other hand, the current estimates of an organization advocating for passage of the proposed ballot question estimates the future local cost of implementation will range between \$26.5 and \$63.6 million, depending on the details of future implementation. In other words, the Respondent's estimate of \$50 million is within the range of other estimates.

The future cost of implementing the proposed voter identification cannot currently be proven or disproven.¹¹ It is therefore not a statement of fact which is actionable under Minn. Stat. § 211B.06. Moreover, a statement only needs to be true in substance; it does not have to be not literally true in every detail. Inaccuracies of detail are immaterial.¹² The Respondent's statement about the future cost of implementing the proposed voter identification amendment may be pessimistic, but it is not demonstrably false.

The Respondent's official website also states that "[a]dopting this new provisional ballot system would trigger oversight by the U. S. Department of Justice under the Help America Vote Act." There is oversight by the Department of Justice under that act only if a state has a provisional ballot system. Minnesota currently does not have a provisional ballot system but would have to create one to implement the proposed voter identification program. This action would place Minnesota under federal oversight. The Respondent's statement is therefore not false.

The Respondent's official website further states:

Under this provision, a Minnesota voter, voting absentee from another state or country would have to have their identity verified in a way that is substantially equivalent to a voter voting in person in the polling place who hands a photo ID to an election judge. It is not clear how this is possible.

This is not a statement of fact. It is not even a statement of opinion. Rather, it is a question which the Respondent suggests cannot be adequately answered. The Complainants do not claim that the statement is untrue. They respond with their own

¹¹ *State v. Florence*, *supra*, 239 N.W.2d at 896.

¹² *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986), *citing Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974).

opinion that adequate verification can be accomplishing in future implementing legislation. In short, the claim made on the website is not a false statement. The Respondent is expressing an opinion about a question about which there are differing views. The content is therefore not actionable under Minn. Stat. § 211B.06.

The website also contains statements that approval of the proposed voter identification amendment “would end same day voter registration as we know it, which is used by over 500,000 voters in presidential elections.” Minnesota’s current election process is such that prospective voters are able to register to vote and cast their votes on the same day. In order to cast a vote under the proposed voter identification amendment, an unregistered voter would, at best, only be allowed to submit a provisional ballot that would not be counted on Election Day. Rather, the prospective voter would need to produce a government-issued identification at the local election office within a few days in order for the vote to be counted. That is clearly a significant change in the process for same day voter registration and is therefore not a false statement. The Complainants do not dispute that. The statement that passage of the ballot question amendment “would end same day voter registration as we know it” is therefore not false. What the Complainants do appear to be challenging is the further statement that the change will affect 500,000 voters in a presidential election, asserting that the change will only affect about 30,000 voters. Both estimates are opinions based on different assumptions. Neither estimate can currently be either proven or disproven. They are therefore not statements of fact which are actionable under Minn. Stat. § 211.06.

The Respondent’s official website also states:

There was a bi-partisan proposal to permit the future use of new technologies to identify voters, but it was rejected. The result is that if the amendment is adopted Minnesota would not be authorized to use more modern means of identification.

The statements that there was such a proposal and that it was not accepted are statements of fact, the truth of which the Complainants do not deny. What the Complainants do challenge is the statement that Minnesota would not therefore be authorized to use more modern means of identification. They assert that it would be possible for a future legislature to enact legislation permitting the use of new technologies. Neither of those statements are statements of fact. Both are opinions about how the proposed constitutional provision might be interpreted in the future. Because the statement is an opinion which cannot be disproven, it is not actionable under Minn. Stat. § 211B.06.

Finally, even if any of the above statements were considered false and actionable, the Complainants must also prove by clear and convincing evidence that the Respondent acted with actual malice—knowing that a statement is false or communicating it with reckless disregard of whether it is false.¹³ To establish probable

¹³ Minn. Stat. § 211B.06.

cause of the existence of maliciousness, the Complainants must come forward with evidence, which if taken as true, would prove that the Respondent “in fact entertained serious doubts” about the truth of his communication or acted with a high degree of awareness” of its probable falsity.¹⁴ Here, the Respondent has filed a sworn affidavit containing testimony which, if taken as true, would establish that he had a good faith belief in the truth of all the statements at issue. By contrast, the Complainants have presented nothing that would establish that Secretary Ritchie knowingly made false statements or communicated them with reckless disregard of whether they were false.

In summary, the Complainants have not established probable cause that any of the statements on the Respondent’s official website violated Minn. Stat. § 211B.06.

B. Letter to Gold Star Mothers

The Complainants also allege that the Respondent violated Minn. Stat. § 211B.06 and Minn. Stat. § 211B.04 in a letter he sent to the President of Gold Star Mothers (“Gold Star Letter”). Minn. Stat. § 211B.32, subd. 3, requires a complainant to “detail the factual basis for the claim that a violation of law has occurred.” The Complainants’ complaint about the Gold Star Letter simply states: “As before, this communication is rife with misinformation which Ritchie knew or should have known to be inaccurate, false and misleading.” There are no specific allegations of false statements, and the required detailed factual basis for that charge is completely lacking. The Complainants therefore failed to establish probable cause to believe that statements in the Gold Star Letter violated Minn. Stat. § 211.06. Even if the ambiguous phrase “as before” is taken to incorporate by reference the charges of false statements made about the contents of the Respondent’s official website, the ALJ has already concluded that no probable cause exists that statements on the Respondent’s website violates Minn. Stat. § 211.06B. In summary, the ALJ concludes that the Complainants have failed to establish probable cause that statements in the Gold Star Letter violated Minn. Stat. § 211.06B. (The alleged violation of Stat. § 211.04B with respect to the Gold Star Letter is discussed in Part V, below.)

C. Statements Made at Public Forums

The Complaint alleges that the oral statements the Respondent made while conducting six public forums¹⁵ violated provisions of Minn. Stat. Ch. 211B. However,

¹⁴ *Amant v. Thompson*, 390 U.S. 737,731 (1964); see also *Riley v. Jankowski*, 713 N.W.2d 379, 401 (Minn. App. 2006, rev. denied (Minn. July19, 2006)).

¹⁵ The Respondent conducted the forums at Mankato, Marshall, Northfield, New Ulm, Red Wing, and Waite Park.

“campaign material,” as defined in Minn. Stat. § 211B.01, subd. 2, is expressly limited to certain written material and excludes oral statements.¹⁶ Therefore, none of those statements are actionable.

D. Newspaper Article and Letter to the Editor

The Complainant offered an affidavit, describing oral statements that the Respondent made during a forum that he attended at Albert Lea.¹⁷ The affidavit was accompanied by a press account of those statements. For two reasons the press account cannot support charges of violations of Minn. Stat. Ch. 211B. First, as discussed above, the content being challenged are oral statements, which are not “campaign material.” Second, the written press account is expressly excluded from the definition of “campaign material” by Minn. Stat. § 211B.01, subd. 2. This section provides:

‘Campaign material’ means any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.

The Complainants also offered, without authentication or comment, what appeared to be editorial comments by the Respondent in the July-August 2012 edition of the *Minnesota Township News*. The Complainants argue that those editorial comments further support their claim that material posted on Respondent’s website is false – specifically, the assertion that it is impossible to devise a way for a person voting by absentee ballot to have their identity verified in a way that is substantially equivalent to voting in person. As the ALJ previously concluded, statements to that effect are the Respondent’s opinions about a matter about which there are differing views. The content therefore does not contain false statements actionable under Minn. Stat. § 211.06B. (The alleged violation of Stat. § 211.04B with respect to the Gold Star Letter is discussed in Part V, below.)

IV. The Disclaimer Required by Minn. Stat. § 211B.04 is Not Required for the Respondent’s Official Website

Having concluded that probable cause does not exist that the Respondent committed violations of Minn. Stat. §§ 211B.09 and 211B.06, there remains to be considered whether he committed violations of Minn. Stat. § 211B.04. Unlike the other two statutes, which are prohibitory, Minn. Stat. § 211B.04 creates an affirmative obligation for:

¹⁶ See, *Stegner v. Smith*, 2008WL 2967011 at *4 (Minn. Ct. App. Aug. 5, 2008) (concluding that oral statements do not constitute “campaign material” within the meaning of § 211B.01); *Stegner v. Smith, et al*, OAH Docket No. 11-6381-19135-CV (2007); *Koalska v. Juneau*, OAH Docket No. 7-6312-16225-CV (2004).

¹⁷ The Respondent has moved to strike those materials as untimely submitted. As noted below, the ALJ concludes that none of those materials tend to establish violations of Minn. Stat. Ch. 211B. Therefore, including them in the probable cause record is not prejudicial to the Respondent.

[a] person who participates in the preparation or dissemination of *campaign material* ... [to] include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) [Emphasis supplied.]

As discussed above, oral statements are not campaign material, and Minn. Stat. § 211B.01, subd. 2, specifically excludes “news items or editorial comments by the news media” from the definition of “campaign material.” The question still remains whether the material on the Respondent’s website, the Gold Star Letter, and the editorial opinion he submitted to the Minnesota Township News (Letter to the Editor) are “campaign material” that required the disclaimer described in Minn. Stat. § 211B.04.

Again, “campaign material” is defined as “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.” The materials on the Respondent’s official website clearly are “literature, publication, or material.” What is less clear is whether the purpose of the materials on the website was to influence voting in the upcoming general. It is fair to say that the website materials focus primarily on potential problems that might arise in the voter identification amendment. In an analogous setting, the Minnesota Supreme Court has construed the phrase “to influence the nomination or election of a candidate or defeat a ballot question” in Minn. Stat. § 10A.01, subds. 27 and 28,” to refer only to “express advocacy.”¹⁸ It is doubtful that the material on the Respondent’s official website relating to the proposed constitutional amendment on elections rises to the level of “express advocacy.” However, even if it does, the ALJ concludes that provisions of Minn. Stat. § 10.60 govern the Respondent’s publications on his official website and specifically empower him to publish the documents in question here, notwithstanding the provisions of Minn. Stat. Ch. 211B. Minn. Stat. § 10.60 governs the operation and contents of the website maintained by the Secretary of State.¹⁹ It expressly specifies the materials that are permitted to be placed on the Respondent’s website and include the following:

A Web site or publication may include press releases, proposals, *policy positions*, and other information directly related to the legal functions, duties, and jurisdiction of a public official or organization.²⁰ [Emphasis supplied.]

The Merriam-Webster Online Dictionary defines “policy” as:

a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions²¹

It defines “position” as:

a point of view adopted and held to <made my *position* on the issue clear>

¹⁸ *Minn. Citizens Concerned for Life, Inc. v. Kelley*, 698 N.W.2d 424, 428-30 (Minn. 2005).

¹⁹ Minn. Stat. Minn. Stat. § 10.60, subds. 1 and 2.

²⁰ Minn. Stat. § 10.60, subd. 4(c).

²¹ Merriam-Webster Online Dictionary (2012 ed.)

The materials on the Respondent's official website at issue here meet the definition of "policy positions" and are expressly permitted there pursuant to Minn. Stat. § 10.60, subd. 4(c).

Although the materials on the Respondent's website may also meet the definition of "campaign material" in Minn. Stat. § 211B.04,²² to the extent that the two statutes are in conflict, the provisions of Minn. Stat. § 10.60 control and exclude the application of Minn. Stat. § 211B.04. Minn. Stat. § 10.60 was enacted seventeen years after Minn. Stat. § 211B.04 and pertains to technology that was not in existence when the latter statute was enacted. Minn. Stat. § 645.26, subd. 4, provides:

When the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail.

Additionally, Minn. Stat. § 645.26, subd. 1, provides:

When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail.

In summary, neither the disclaimer nor the other provisions of Minn. Stat. Ch. 211B apply to permitted materials on the Respondent's website. Therefore, probable cause does not exist for a violation of Minn. Stat. § 211B.04 with respect to the Respondent's website.

V. A Disclaimer Was Also Not Required for the Gold Star Letter or for the Respondent's Letter to the Editor

The final issue to be addressed is whether Minn. Stat. § 211B.04 applies to an individual's correspondence to an organization or to letters from an individual to the editors of a newspaper. There are two dimensions to this issue. First, does the statute generally apply to those activities? Second, does it matter whether the individual initiating the correspondence is an elected public official, acting in his or her official capacity?

Minn. Stat. § 211B.04(a), (b), and (d) provide:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a

²² See discussion on "express policy" at p. 8, *supra*.

disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the committee, (address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the committee, (address), in support of insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

* * *

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to (insert name of candidate or ballot question)" or that "this publication is not circulated on behalf of any candidate or ballot question."

The text of the prescribed disclaimers indicates that the legislature intended Minn. Stat. § 211B.04 to primarily address the activities of a "committee." The statutorily prescribed disclaimers speak only of "committees," which Minn. Stat. § 211B.01, subd. 4, defines as:

two or more persons acting together or a corporation or association acting to influence the nomination, election, or defeat of a candidate or to promote or defeat a ballot question. Promoting or defeating a ballot question includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot.

The Respondent is not a committee. Although primarily aimed at committees, the statute does apply to individuals in limited circumstances:

This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.²³

Although one could assume that the legislature intended the disclaimer requirement to apply only to individuals who were representing or acting on behalf of some other entity. If the requirement is construed to apply to the correspondence of individuals acting solely on their own behalf, then thousands of Minnesotans would be violating Minn. Stat. § 211B.04 every year. There is no evidence here that when the Respondent sent

²³ Minn. Stat. § 211B.04(f).

the Gold Star Letter and the Letter to the Editor, he was acting in concert with any “political committee, or political fund.” He was acting independently as an individual, albeit in his capacity as Secretary of State.

Minn. Stat. § 10.60 not only governs official state websites, it also governs the “publications” prepared and disseminated by any “entity in the executive, judicial, or legislative branch of state government.”²⁴ “Publication” is defined as:

a document printed with public money by an elected or appointed official of a state agency or political subdivision that is intended to be distributed publicly outside of the state agency or political subdivision.²⁵

Both the Gold Star Letter and the Letter to the Editor are “publications” within the meaning of Minn. Stat. § 10.60, subd. 1(2). As discussed above,²⁶ the contents of both letters are “policy positions” of the Secretary of State and are expressly permitted by Minn. Stat. § 10.60, subd. 4(c), notwithstanding the provisions of Minn. Stat. Ch. 211B. Accordingly, probable cause does not exist that a violation of Minn. Stat. § 211B.04 occurred with respect to the Gold Star Letter and Letter to the Editor.

VI. Conclusion

As discussed above, the Administrative Law Judge concludes that there is no probable cause to believe that any of the violations of Minn. Stat. Ch. 211B alleged in the complaint have occurred. Accordingly, this matter must be dismissed.

B. H. J.

²⁴ Minn. Stat. § 10.60, subd. 1(2) and subd. 4.

²⁵ Minn. Stat. § 10.60, subd. 1(2).

²⁶ See p 9, *supra*.